

REMARKS

In the Restriction Requirement, the Examiner requested Applicants to elect one of the following inventions:

Group I (claims 1-9) drawn to a combination of cDNAs and their methods of use.

Group II (claims 10-13) drawn to cDNAs, vectors and host cells comprising the cDNAs and their methods of use.

Group III (claim 14) drawn to polypeptides.

Group IV (claims 15 and 16) drawn to a protein binding assay.

Group V (claim 17) drawn to a method of eliciting an antibody in an animal and purification of an antibody.

Group VI (claims 18-20) drawn to antibodies and their use.

The Examiner further stated that the application contains claims directed to patentably distinct species.

In Group 1, the species are species of ligand (claim 9). Claims 1-8 are generic.

In Group 2, the species are species of ligand (claim 16). Claim 15 is generic.

Applicant is advised that a reply must include an identification of the species and a listing of the claims readable thereon.

The Examiner further stated that each group reads on patentably distinct sequences. For Group I drawn to combinations of cDNAs, applicant must elect a single combination. For an elected Group drawn to nucleotide sequences, applicant must elect one nucleic acid sequence.

Applicants hereby elect, with traverse, to prosecute Group I, which includes and is drawn to Claims 1-9. Applicants further elect the combination of SEQ ID NO:1-850 for the examination of claims of Group I, and further elect the species of ligand of "transcription factors" relative to the examination of claim 9, again with traverse.

Applicants object to the restriction requirement on the following grounds. The MPEP, at § 803.04, gives examples of nucleotide sequence claims containing independent nucleotide sequences recited in the alternative form (Example (A) in MPEP 803.04) and combination claims (Examples (B) and (C) in MPEP 803.04), as in Groups I (claims 1-9) and II (claims 10-13), respectively, of the instant application. The MPEP then considers proper restriction in those instances as follows:

In applications containing all three claims set forth in examples (A)-(C), **the Office will require restriction of the application to ten sequences for initial examination purposes.** Based upon the finding of allowable sequences, claims limited to the allowable sequences as in example (A), all combinations, such as in examples (B) and (C), containing the allowable sequences and any patentably indistinct sequences will be rejoined and allowed.

Rejoinder will be permitted for claims requiring any allowable sequence(s). Any claims which have been restricted and nonselected and which are limited to the allowable sequence(s) will be rejoined and examined. (Emphasis added)

Applicants therefore submit that proper restriction in the instant case would require restriction of the application to ten sequences for initial examination purposes at applicants discretion. On this basis, applicant would elect the ten sequences of SEQ ID NO:13-15 and 170-179 relative to the examination of claims 1-13 of Groups I and II. Applicants further object to the requirement for an election of a species of ligand in claim 9. Since the claim is drawn to a method of screening for said ligands that is limited to the claimed combination of nucleic acid sequences, and not to the species of ligand itself, an examination of the molecules or compounds to be screened is not required.

Applicants therefore request reconsideration of the restriction requirement and examination of claims 1-13 of Groups I and II relative to the elected sequences. In the event that the Examiner maintains the restriction requirement, the Examiner is reminded of the requirement under MPEP 803.04, above, that any claims which have been restricted and nonselected and which are limited to the allowable sequence(s) will be rejoined and examined. Applicants further reserve the right to prosecute the subject matter of non-elected claims in subsequent divisional applications.

CONCLUSION

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. **09-0108**.

Respectfully submitted,

INCYTE CORPORATION

Date: November 24, 2003

A handwritten signature in black ink, appearing to read "David G. Streeter", is written over a horizontal line.

David G. Streeter, Ph.D.

Reg. No. 43,168

Direct Dial Telephone: (650) 845-5741

Customer No.: 27904
3160 Porter Drive
Palo Alto, California 94304
Phone: (650) 855-0555
Fax: (650) 849-8886